

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Federal-State Joint Board on Universal)	
Service Seeks Comment on Proposals to)	
Modify the Commission's Rules Relating to)	
High-Cost Universal Service Support)	

COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES

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SUMMARY

The Nebraska Rural Independent Companies (the “Nebraska Companies”) commend the efforts of the members of the Federal-State Joint Board on Universal Service (“Joint Board”) to attempt to develop plans for dealing with the wide range of universal service issues currently before the Federal Communications Commission (“Commission”).

The proposals generally do not contain sufficient detail in order to recommend that any of such proposals should be adopted. However, many of the proposals present common concepts for reorganizing the current universal service support mechanisms, and several of these concepts merit further consideration and study. Concepts worthy of further consideration include the formation of separate funds for wireline and wireless carriers, and a balanced approach that includes a state and federal role in the funding and administration of universal service. The Nebraska Companies believe that the continued use of embedded costs is the only appropriate means to determine costs for rural carriers at this time. The Nebraska Companies also assert that the averaging of costs across all carriers in a state will likely result in inadequate support for many companies.

Many of the proposals do not directly address the specific issues related to universal service for rural carriers raised in Commission’s referral. Therefore, the scope of the inquiry would need to be broadened for such proposals to be considered. It is also premature for the Joint Board to consider changes to the universal service support mechanism given pending intercarrier compensation reform and universal service contribution mechanism changes. Therefore, the Nebraska Companies recommend further study of the concepts contained in the proposals at this time.

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I. INTRODUCTION

The Nebraska Rural Independent Companies (the "Nebraska Companies") hereby submit comments in the above captioned proceeding.¹ With this Public Notice ("Notice")² the Federal-State Joint Board on Universal Service ("Joint Board") seeks comment on proposals that several Joint Board members and staff have developed. The proposals offer solutions for addressing the issues of universal service for rural carriers and the basis of support for competitive eligible telecommunications carriers ("CETCs"). The Nebraska Companies commend the effort of the

¹ The Nebraska Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco, Inc., Consolidated Telecom, Inc., Consolidated Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K&M Telephone Company, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Rock County Telephone Company, Stanton Telecom, Inc. and Three River Telco.

² See Public Notice, *Federal State Joint Board Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, FCC 05J-1 ("*Joint Board Proposals Notice*") (rel. Aug. 17, 2005).

Joint Board members to attempt to develop comprehensive plans for dealing with the myriad of universal service issues before the Commission.

II. THE PROPOSALS PRESENT SOME INTERESTING AND POTENTIALLY USEFUL CONCEPTS FOR MODIFICATION OF THE UNIVERSAL SERVICE SUPPORT SYSTEM; HOWEVER, GREATER DETAIL IS NECESSARY BEFORE A COMPLETE ASSESSMENT CAN BE MADE.

In general, the proposals present a general framework for reorganization of the current universal service support mechanisms. While each proposal is unique, many of the proposals contain common concepts. However, the proposals generally do not contain sufficient detail in order to allow the Nebraska Companies to offer comment on questions posed by the Joint Board, such as how each proposal addresses the goals of the Act, the Commission's universal service goals, and other issues described in the August 2004 Public Notice.³ Therefore, these Comments address common concepts contained in the proposals, and the potential merits and/or drawbacks of each concept.

A. The Universal Service Support Mechanism Should Be Federally Funded With Supplemental Funding Provided By Individual States For Use Within The State, With The Distribution Of Support Amounts By Company Determined By The States Instead Of The Commission.

Many of the proposals suggest that the federal universal service support mechanism should be administered as a "block grant," in which the Commission determines the amount of federal universal service support that would be received by a state. The states in turn, in some instances under guidelines produced by the Commission, would determine the amount of universal service support that would be distributed to individual eligible telecommunications carriers ("ETCs") within a state under such proposals. In addition, some of the proposals suggest that states may wish to supplement federal universal service funding and administer their own

³ Id. at para. 1.

universal service funds to achieve state universal service goals. The Nebraska Companies believe that the general concept that states should play an active role in the preservation and advancement of universal service has merit, as Section 254 of the Telecommunications Act of 1996 (the “Act”) gives both federal and state governments a role in universal service. The Commission has previously indicated that in some instances, such as service quality regulation, the states may be in a better position to enforce such regulations with regard to universal service, as most states have already established mechanisms to ensure service quality in their jurisdictions.⁴ However, the Nebraska Companies believe that a balanced approach that includes a state and federal role in the funding of universal service, as well as in the distribution of universal service support, is the best means to achieve the universal service principles contained in the Act. A joint federal and state role allows for consistency in universal service policy through federal programs that would cover all states, while also addressing the unique needs of individual states through state programs. Nevertheless, although the Nebraska Companies believe that a successful universal service policy for the nation depends on both federal and state involvement, the Nebraska Companies urge the Joint Board to look at other avenues for federal and state coordination of universal service roles, beyond the “block grant” concept contained in many of the proposals before the Joint Board.

B. Federal Universal Service Support Funding Would Be Based On Either An Embedded Or Forward-Looking Cost Model Process.

None of the plans contain sufficient detail regarding the manner in which federal universal service support funding would be determined in order to facilitate meaningful comment

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157 (rel. May 8, 1997) at para. 101.

on their potential merits or drawbacks at this point. However, the Nebraska Companies assert that hypothetical forward-looking proxy models such as the HCPM currently used by the Commission to determine non-rural company costs are not accurate predictors of rural company costs.

As the Rural Task Force demonstrated in its examination of the FCC's Synthesis Model, the model produces cost estimates that vary widely from embedded costs.⁵ In addition to a great range of variation, the variation resulted in individual company costs estimated using the synthesis model far in excess or far below the embedded costs of the company. Therefore, the use of the inaccurate data from the Synthesis Model would have greatly advantaged or disadvantaged individual rural carriers relative to the use of more accurate embedded cost data.

The Synthesis Model likely produces cost estimates that vary widely from embedded costs due to the hypothetical nature of the model. The Synthesis Model, as well as other forward-looking economic cost ("FLEC") proxy models, bases costs on a hypothetical network that is designed based on a set of assumptions, not actual data. For example, customer locations are not always known, and assumptions are made to develop hypothetical customer locations when actual customer location data is unavailable. The hypothetical nature of the FLEC proxy models makes it difficult, if not impossible, to construct the models such that they could accurately estimate costs, especially for rural areas.

In addition to the hypothetical nature of FLEC proxy models, there are cases in which information used in such models that are to represent actual information is incorrect. For

⁵ See *A Review of the FCC's Non-Rural Universal Service Fund Method and the Synthesis Model for Rural Telephone Companies*, Rural Task Force White Paper 4, September, 2000 available at: <http://www.wutc.wa.gov/rtf/rtfpub.nsf/43e458610b70dda882567d00074c6cd/7e7e6b591c8b6bf38825696800730b2b!OpenDocument> at p. 10.

example, the Nebraska Public Service Commission (“NPSC”) desired to use data from the Benchmark Cost Proxy Model (“BCPM”) to administer the Nebraska Universal Service Fund (“NUSF”). Upon examination, a group of rural companies in Nebraska discovered that the exchange boundaries that are contained in the BCPM, which were obtained from a commercial vendor of exchange boundary maps, do not match the exchange boundary maps on file with the NPSC, which are the official maps for the purpose of determining exchange boundaries.⁶ The group of rural companies urged the NPSC to correct the exchange boundaries prior to using the BCPM data, and the NPSC did so.⁷ The correction of the exchange boundaries did not occur without expenditure of considerable time and expense. In order for FLEC proxy models to accurately reflect costs, such an effort would need to be undertaken for all fifty states. Furthermore, such an effort would correct only one of many error sources that are contained in FLEC proxy models.

While the above discussion focuses on the Synthesis Model, other FLEC proxy models would not be any more likely to produce reasonable estimates of rural carriers’ costs. All FLEC proxy models suffer from the deficiencies of their hypothetical nature – they attempt to model a real network, but generally fail to do so. Furthermore, only two other FLEC proxy models, the HAI Model and the BCPM, have been considered by the Commission in its proceeding to choose a model to estimate non-rural carriers’ costs, and the Commission found the Synthesis Model to

⁶ See *The Nebraska Public Service Commission, on its Own Motion, Seeking to Establish a Long-Term Universal Service Funding Mechanism*, Application No. NUSF-26, Progression Order No. 4, Direct Testimony of Sue Vanicek on Behalf of the Nebraska Rural Independent Companies (filed June 6, 2003) at 8:32-45 and Post-Hearing Brief of the Rural Independent Companies (filed Aug. 15, 2003) at p. 19.

⁷ See *The Nebraska Public Service Commission, on its Own Motion, Seeking to Establish a Long-Term Universal Service Funding Mechanism*, Application No. NUSF-26, Order Seeking Comments on Data Set (entered Mar. 18, 2004) at p. 1.

be superior to both of these models.⁸ In addition, major changes have not been made to any of the FLEC proxy models since the Commission examined such models in its proceeding regarding universal service support for non-rural carriers. Therefore, the Nebraska Companies believe that the continued use of embedded costs is the only appropriate means to determine costs for rural carriers at this time.

C. In Order To Permit Companies The Opportunity To Transition From The Current Support Mechanism To Any Proposed New Mechanism, Adequate Time Must Be Provided.

Many of the plans contain transition periods from the current support mechanism to the proposed new support mechanism. Some of the plans contain specific suggestions regarding the amount by which each carrier's support will be allowed to decrease during the transition period, while other proposals discuss the transition from the current support mechanism to a new support mechanism in more general terms, discussing only timetables and how the total amount of support per state would be calculated, without addressing a transition for individual carriers.

To the extent that any carrier would experience a decrease in the amount of support received under a new universal service support mechanism, the Nebraska Companies urge that a transition mechanism should be included to allow the individual carrier a sufficient period of time to make adjustments to its operations and rates so that it can continue to meet universal service obligations under the new mechanism. Indeed, the need for a transition period and specific rules governing the amount by which a carrier's universal service support would be allowed to decrease during such a period was recognized by the Commission when it adopted a new universal service support mechanism for non-rural companies. The Commission found that

⁸ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 and *Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket No. 97-160, Fifth Report and Order, FCC 98-279 (rel. Oct. 28, 1998) at para. 3.

a “hold-harmless” provision was necessary to prevent substantial reductions of federal support and any rate shock that may occur when a new federal universal service support mechanism goes into effect.⁹ The Commission also found that the “hold harmless” provision should be applied on a carrier-by-carrier basis.¹⁰

While the Nebraska Companies believe a transition mechanism is necessary when changing to a new universal service support mechanism, another factor that must be considered in any new mechanism is whether it produces sufficient support for universal service. A transition mechanism cannot mitigate the negative effects on universal service of insufficient support amounts. It is unclear from the *Joint Board Proposals Notice* whether any of the plans would result in insufficient support for carriers, but such a result appears very possible.

D. Averaging Of Costs Across All Carriers In A State Will Likely Result In Inadequate Support For Many Companies

Some of the proposals suggest that an average cost, computed for all carriers within a state, should be used to determine the amount of support received by carriers within a state instead of individual carrier costs, which are used to determine support amounts for rural carriers at the current time. Such an approach may result in insufficient federal support for predominantly rural states with small total populations. This is because such states may have a large enough urban population that the average cost across all carriers does not appear unusually high. However, because of their small population base, such states may have difficulty developing state mechanisms to adequately maintain comparable rates across urban and rural areas.

⁹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report & Order and Eighteenth Order on Reconsideration, FCC 99-306 (rel. Nov. 2, 1999) at para. 77.

¹⁰ Id. at para. 78.

The USERP is the only plan that appears to have anticipated this potential problem, and thus offers supplemental support in some instances.¹¹ However, this proposal could not be readily implemented by many states without additional effort, as it requires the calculation of average cost by unbundled network element (“UNE”) zone, and many rural carriers do not offer UNEs. Therefore, the areas that such carriers serve are not currently assigned to a UNE zone. The provision of supplemental support to states may be intended to mitigate problems associated with the use of statewide average costs to determine universal service support. However, the Nebraska Companies believe that the best manner to ensure sufficient support to carriers is to compute support amounts based on an individual carrier’s cost, not a statewide average cost.

E. Revenue Neutrality Will Not Be Maintained And There Is No Data To Determine The Impact On States And Individual Companies.

None of the plans contain sufficient detail to determine whether changes in the amount of universal service support received by carriers would be detrimental to universal service in the form of reduced incentives for investment and the offering of quality service. Significant decreases in federal universal service support to carriers would result in decreased investment and incentives for efficiency. Since small carriers are limited in their ability to consolidate operations and reduce costs, significant decreases in the amount of universal service support received by rural carriers may jeopardize the provision of universal service in rural areas.

In order to adequately comment on any of the proposals, data should be presented identifying the amount of universal service support to be received on a state-by-state and carrier-by-carrier basis. Such information was presented prior to final adoption of the new non-rural

¹¹ See *Joint Board Proposal Notice*, “Universal Service Endpoint Reform Plan (USERP)”, proposed by Joel Shifman, Peter Bluhm and Jeff Pursley, Appendix D (“*USERP Plan*”) at p. 23.

universal service support mechanism, and such data should be provided before making substantial changes to support for rural carriers as well.

F. Costs Are Not Jurisdictionalized.

Many of the plans do not use separated costs in the calculation of universal service support. This may have some implications for state rate regulation, especially for states that still use rate-of-return regulation. Additional detail on such plans, as well as a study of current state rate regulation, would be necessary to determine the effects of such a change in the universal service support mechanism.

G. Support Would Be Provided Through Separate Funds For Wireless And Wireline Carriers.

Some proposals, for example the USERP, propose that wireless CETCs would no longer be funded by “portable” universal service support that is based on the costs of incumbent wireline carriers.¹² Instead, the USERP proposes that wireless CETCs would instead be funded through a separate fund that would only be available to wireless carriers.¹³

The Nebraska Companies believe this proposal has potential merit, as do others. Dr. Bill Gillis, Director of the Washington State University Center to Bridge the Digital Divide and Chair of the Rural Task Force, has observed:

We need to fundamentally rethink our approach to universal service in the modern era to accommodate the need to provide rural Americans with access to all the benefits of modern telecommunications including a network capable of accessing broadband services, mobile wireless and basic voice telephone. We, of course, need to do this

¹² See *USERP Plan* at p. 26.

¹³ *Id.* at p. 27.

responsibly without unnecessarily exploding the size of the nation's universal service fund. I believe this is entirely feasible, but we must first frame the problem correctly.¹⁴

I would suggest reframing the issue in a different context. First I would observe mobile wireless and traditional telecommunications are not for the most part competing services and have been inappropriately characterized as such. With the exception of those cases where mobile wireless has resulted in the ability of customers to eliminate their traditional telecommunications connection, we are discussing complementary services, both desired by consumers for different reasons.¹⁵

I suggest we should refocus the question as, “What would it cost *and how do we appropriately allocate available universal service support to ensure rural Americans will have a choice to purchase both quality mobile wireless service and a service CAPABLE of providing broadband connectivity?*”¹⁶ (emphasis added)

The establishment of two separate funds, one of which would be focused toward providing a broadband capable network¹⁷ and the other focused on the provision of quality mobile service, would have the potential of providing both services to rural areas in a manner that does not unnecessarily strain limited universal service funding resources. Both the Commission and the Joint Board have recognized that the current structure of the universal service mechanism providing high cost support is leading to unsustainable growth. The Commission asked the Joint Board to consider, and the Joint Board recommended, that support should only be paid for a single connection to the network, also known as a “primary line.” However, as noted by many commenting parties in the proceeding, the “primary line” proposal would have had unintended negative consequences to universal service principles while

¹⁴ See testimony of Dr. Bill Gillis, Director, WSU Center to Bridge the Digital Divide, before the Communications Subcommittee of the Senate Committee on Commerce, Science, and Transportation, April 2, 2003 at p. 3.

¹⁵ Id. at p. 6.

¹⁶ Ibid.

¹⁷ Dr. Gillis notes that the typical wireless technology does not provide access to the modern broadband network. Id. at p. 5.

attempting to limit the growth of support, for example, reduced incentives for investment in the network due to uncertainty regarding cost recovery for new investments. Furthermore, several Joint Board members indicated that they feared that the “primary line” proposal could jeopardize the provision of universal service in certain high cost areas in which multiple ETCs were designated, as no single ETC might receive sufficient support in order for it to serve all customers.

The Nebraska Companies believe that the establishment of a separate fund for wireline and wireless carriers is a proposal that merits further study. In examining the development of a separate wireless fund, the remarks of Dr. Gillis quoted below may be useful in focusing on the appropriate goals and design of such a fund.

In the case of mobile wireless careful attention should be given to whether the present practice of allocating universal service to carriers based upon the number of connections to the network makes sense. Focusing on the goal of eliminating current holes in the wireless network and dependable E-911 service in all locations, a distribution based on the number [of] cell phones supported by the carrier may not be appropriate. The costs incurred in meeting the objective are the construction [of] new towers and the electronic enhancements. The current allocation system does not recognize the likely reality that adding new cell phone users only adds marginally to the cost of achieving the goal. An alternative basis of allocating subsidy supporting desired mobile wireless facility upgrades such as targeted grants or low-interest loans may be a more appropriate vehicle to achieve the desired end than the current practice of awarding universal service to wireless carriers on a per connection basis creating a potentially unnecessary expansion to the federal fund.¹⁸

The Nebraska Companies caution that if a separate wireless universal service support mechanism is established, sufficient funding must be maintained for the wireline support mechanism, in order to continue to ensure that the universal service principles in the Act are fulfilled.

¹⁸ Id. at pp. 6-7.

III. THE COMPANIES URGE THE JOINT BOARD TO CONSIDER THE PROPOSALS IN A BROADER CONTEXT OF UNIVERSAL SERVICE ISSUES.

A. Many Of The Proposals Do Not Directly Address The Specific Issues Related To Universal Service For Rural Carriers Raised In Commission's Referral. Therefore, The Scope Of The Inquiry Would Need To Be Broadened For Such Proposals To Be Considered.

Many of the plans make no distinctions between rural carrier support and non-rural carrier support. For example, the proposals that suggest support should be given to states to administer as "block grants" do not make a distinction between support for rural and non-rural carriers. Rather, the proposals suggest that a single support amount would be allocated to states, and the states could determine how they wish to distribute that support among rural and non-rural carriers. However, the Joint Board inquiries¹⁹ deal only with issues referred to it by the Commission related to universal service for rural carriers;²⁰ therefore, the Joint Board would be going beyond the scope of inquiry established by the Commission if it were to address issues related to universal service support for non-rural carriers. In order for the Joint Board to properly consider the proposals in their entirety, including any portions of the proposals dealing with support for non-rural carriers, the Joint Board should first receive a referral of such issues from the Commission.

Some of the proposals address issues such as the contribution mechanism for universal service, which is an issue currently being addressed in another proceeding before the

¹⁹ See Public Notice, *Federal-State Joint Board Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, FCC 04J-2 (rel. Aug. 16, 2004) and *Joint Board Proposals Notice*.

²⁰ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 04-125 (rel. June 28, 2004).

Commission.²¹ In order for the Joint Board to properly consider such issues within a proposal, the Joint Board should first receive a referral of such issues from the Commission.

Many, if not all, of the proposals appear to have been developed in response to the NARUC examination of intercarrier compensation issues. As such, the proposals appear to be developed to deal with a broader range of issues than those included in the referral to the Joint Board from the Commission. For example, one of the issues being addressed in the intercarrier compensation proceeding includes whether reduced access charge revenue should be offset with universal service funding,²² how much additional support should be provided,²³ and how such support should be distributed.²⁴ As indicated above, the Nebraska Companies believe the Joint Board should consider issues only when specific issues have been directly referred to it by the Commission.

²¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Rely Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, *Telecommunications Service for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, *Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size*, CC Docket No. 92-237, NSD File No. L-00-72, *Number Resource Optimization*, CC Docket No. 99-200, *Telephone Number Portability*, CC Docket No. 95-116, *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329 (“*Contribution Mechanism Further Notice*”) (rel. Dec. 13, 2002).

²² See *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, FCC 05-33 (“*Intercarrier Compensation Further Notice*”) (rel. Mar. 5, 2005) at para. 108.

²³ *Id.* at para. 109.

²⁴ *Ibid.*

B. It Is Premature For The Joint Board To Consider Changes To The Universal Service Support Mechanism Given Pending Intercarrier Compensation Reform And Universal Service Contribution Mechanism Changes.

The Commission currently has an open proceeding addressing potential changes in intercarrier compensation.²⁵ Some of the commenting parties in that proceeding recommended moving costs currently recovered through access charges and reciprocal compensation to a universal service support mechanism.²⁶ Proposals such as the *ICF Plan* would result in major shifts in cost recovery and make many rural companies even more dependent upon universal service support than is currently the case. Therefore, the Joint Board cannot judge the impact of the universal service proposals currently before it without first knowing the impact of changes in intercarrier compensation that the Commission may consider.

The Commission also has an open proceeding addressing potential changes to the universal service contribution mechanism.²⁷ Without knowing the outcome of this proceeding, it will be difficult for the Joint Board to identify the amount of universal service funding that will be available. Absent such knowledge, the Joint Board cannot estimate the impact that proposals such as those for “block grant” funding would have on individual states and carriers.

Due to the fact that major proceedings are open that could significantly change the amount of universal service funding available, both as a whole and to individual carriers, the Nebraska Companies believe it is premature for the Joint Board to consider changes to the universal service support mechanism, such as changes contained in the proposals, without knowledge concerning the outcome of the above mentioned proceedings.

²⁵ See *Intercarrier Compensation Further Notice*.

²⁶ See *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the Intercarrier Compensation Forum (filed May 23, 2005).

²⁷ See *Contribution Mechanism Further Notice*.

IV. CONCLUSION

The Nebraska Companies commend the effort of the Joint Board members to develop comprehensive plans for dealing with the myriad of universal service issues before the Commission. Many of the concepts contained in these proposals have merit, and deserve further consideration. However, given the lack of detail in the proposals, the fact that many of the proposals address issues which are outside the scope of the Commission's referral to the Joint Board, and the fact that other major universal service proceedings have not yet been resolved, the Nebraska Companies believe it would be premature for the Joint Board to recommend to the Commission that any of the proposals should be adopted at this time.

Dated: September 30, 2005.

Respectfully submitted,

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